IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.
SUMMONS FOR JUDGMENT NO.30 OF 2007
IN
SUMMARY SUIT NO.1529 OF 2006

M/s. M. Ramaswamy Consutancy &
Associated Services Pvt. Ltd. ..Plaintiff.
Vs.
Shirish Betgiri, Proprietor
M/s. S & S Sea Foods ..Defendant.

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Mr. Jay K. Bhatia for the Plaintiff.
Mr. B.A. Walimbe i/b Preetam Tendulkar for the Defendant.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**
2nd April, 2007.

P.C. :

1. The Summary Suit under Order 37 of the Code of Civil Procedure 1908 is based on goods sold, supplied and delivered. In pursuance of the request made by the Defendant on 29th May, 2002 for the supply of 15,000 cardboard packing cartons, the Plaintiff sold, supplied and delivered the quantity ordered. The delivery challans have been duly acknowledged in token of receipt. Several letters were addressed by the Plaintiff to the Defendant on 26th February, 2003, 16th May, 2003, 11th June, 2003 and 16th July, 2003 amongst others, to which there was no reply. Eventually, by a letter dated 21st

July, 2003 the Defendant stated that as against an amount of Rs.6,55,348/- due as per the statement of account handed over by the Plaintiff on 18th July, 2003, an amount of Rs.5,89,948/- was due and payable inclusive of a bill dated 13th February, 2003. The Defendant stated that an amount of Rs.1 lac would be paid by the end of July or in early August 2003. Thereafter a notice of demand dated 11th May, 2005 was addressed, there being no other payment, save and except for a payment of Rs.1 lac which was made by cheque on 25th July, 2003 and 30th July, 2003. Eventually a suit was instituted before the Court for the recovery of the balance due on 1st June, 2006. The defence that has been raised at the hearing of the Summons for Judgment is that the claim of the Plaintiff is barred by limitation. The suit was instituted on 1st June, 2006. According to the Defendant, the letter annexed at Exh. D to the Plaint is not genuine or authentic and the Defendant denies having issued the facsimile communication dated 21st July, 2003.

2. Prima facie, the defence cannot be accepted. The letter of the Defendant dated 21st July, 2003 contains a statement that an

amount of Rs.1 lac would be arranged by the end of July or in early August 2003. Thereafter admittedly two cheques were issued on 25th July, 2003 in the amount of Rs.55,000/- and on 30th July, 2003 in the amount of Rs.45,000/-. In the circumstances, the part payments which were made in July, 2003, constitute an acknowledgment of liability by the Defendant. The suit, therefore, prima facie appears to be within the period of limitation.

3. The Defendant has not denied the receipt of the goods nor is there any dispute as to quality. However, having regard to the nature of the defence, it would be appropriate, in my view, if leave to defend the suit is granted to the Defendant conditional on the deposit of an amount of Rs. 3 lacs. Upon deposit, the amount shall be invested in a Fixed Deposit of a nationalized bank, to be renewed periodically by the Prothonotary and Senior Master during the pendency of the suit. Conditional on the aforesaid deposit, written statement to be filed within a period of eight weeks from today.